

# SENATE BILL 221

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By: **Senator Frosh**

Introduced and read first time: January 20, 2012

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Courts and Judicial Proceedings – Strategic Lawsuits Against Public**  
3 **Participation**

4 FOR the purpose of establishing certain burdens of proof and procedures in an alleged  
5 strategic lawsuit against public participation (SLAPP) suit; requiring a court to  
6 consider certain evidence and pleadings in ruling on a motion to dismiss or to  
7 stay an alleged SLAPP suit; providing for the effect of a certain finding;  
8 authorizing the Office of the Attorney General, or a certain government body to  
9 which a certain communication was directed, to intervene to defend or support a  
10 certain party in an alleged SLAPP suit; requiring a court to stay any discovery  
11 and pending hearings or motions in an alleged SLAPP suit on the filing of a  
12 motion to dismiss or to stay and until the court rules on the motion; requiring a  
13 court to award certain attorney's fees, costs, and other relief under certain  
14 circumstances; altering a certain definition; defining certain terms; providing  
15 for the application of this Act; and generally relating to SLAPP suits.

16 BY repealing and reenacting, with amendments,  
17 Article – Courts and Judicial Proceedings  
18 Section 5–807  
19 Annotated Code of Maryland  
20 (2006 Replacement Volume and 2011 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article – Courts and Judicial Proceedings**

24 5–807.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1           [(a) In this section, “SLAPP suit” means a strategic lawsuit against public  
2 participation.

3           (b) A lawsuit is a SLAPP suit if it is:

4                   (1) Brought in bad faith against a party who has communicated with a  
5 federal, State, or local government body or the public at large to report on, comment  
6 on, rule on, challenge, oppose, or in any other way exercise rights under the First  
7 Amendment of the U.S. Constitution or Article 10, Article 13, or Article 40 of the  
8 Maryland Declaration of Rights regarding any matter within the authority of a  
9 government body or any issue of public concern;

10                   (2) Materially related to the defendant’s communication; and

11                   (3) Intended to inhibit or inhibits the exercise of rights under the First  
12 Amendment of the U.S. Constitution or Article 10, Article 13, or Article 40 of the  
13 Maryland Declaration of Rights.]

14           **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**  
15 **MEANINGS INDICATED.**

16                   **(2) “CLAIM” INCLUDES A CIVIL ACTION, CROSS-CLAIM,**  
17 **COUNTERCLAIM, OR OTHER JUDICIAL PLEADING OR FILING REQUESTING**  
18 **RELIEF.**

19                   **(3) (I) “ISSUE OF PUBLIC CONCERN” MEANS AN ISSUE**  
20 **RELATED TO:**

21                               **1. HEALTH OR SAFETY;**

22                               **2. ENVIRONMENTAL, ECONOMIC, OR COMMUNITY**  
23 **WELL-BEING;**

24                               **3. FEDERAL, STATE, OR LOCAL GOVERNMENT;**

25                               **4. A PUBLIC FIGURE; OR**

26                               **5. A GOOD, PRODUCT, OR SERVICE IN THE**  
27 **MARKETPLACE.**

28                               **(II) “ISSUE OF PUBLIC CONCERN” DOES NOT INCLUDE**  
29 **PRIVATE INTERESTS, SUCH AS PROTECTING THE SPEAKER’S COMMERCIAL**  
30 **INTERESTS.**

1           **(4) “SLAPP” SUIT OR “STRATEGIC LAWSUIT AGAINST PUBLIC**  
2 **PARTICIPATION” MEANS A CLAIM ARISING FROM:**

3           **(I) A WRITTEN OR ORAL STATEMENT MADE:**

4                   **1. IN CONNECTION WITH AN ISSUE UNDER**  
5 **CONSIDERATION OR REVIEW BY A FEDERAL, STATE, OR LOCAL GOVERNMENT**  
6 **BODY; OR**

7                   **2. TO THE PUBLIC IN CONNECTION WITH AN ISSUE**  
8 **OF PUBLIC CONCERN; OR**

9           **(II) ANY OTHER EXPRESSION OR EXPRESSIVE CONDUCT**  
10 **THAT INVOLVES PETITIONING THE GOVERNMENT OR COMMUNICATING TO THE**  
11 **PUBLIC IN CONNECTION WITH AN ISSUE OF PUBLIC CONCERN.**

12           **[(c)] (B)** A defendant in a SLAPP suit is not civilly liable for communicating  
13 with a federal, State, or local government body or the public at large, if the defendant,  
14 without constitutional malice, reports on, comments on, rules on, challenges, opposes,  
15 or in any other way exercises rights under the First Amendment of the U.S.  
16 Constitution or Article 10, Article 13, or Article 40 of the Maryland Declaration of  
17 Rights regarding any matter within the authority of a **FEDERAL, STATE, OR LOCAL**  
18 **government body or any issue of public concern.**

19           **[(d)] (C) (1)** A defendant in an alleged SLAPP suit may move to:

20                   **[(1)] (I)** Dismiss the alleged SLAPP suit, in which case the court  
21 shall hold a hearing on the motion to dismiss as soon as practicable; or

22                   **[(2)] (II)** Stay all court proceedings until the matter about which the  
23 defendant communicated to the government body or the public at large is resolved.

24                   **(2) (I) A PARTY BRINGING A MOTION TO DISMISS OR A MOTION**  
25 **TO STAY UNDER THIS SUBSECTION SHALL BEAR THE INITIAL BURDEN OF**  
26 **MAKING A PRIMA FACIE SHOWING THAT THE LAWSUIT IS A SLAPP SUIT.**

27                   **(II) IF THE MOVING PARTY MEETS THE INITIAL BURDEN**  
28 **DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE RESPONDING**  
29 **PARTY SHALL BEAR THE BURDEN OF ESTABLISHING A PROBABILITY OF**  
30 **PREVAILING IN THE LAWSUIT BY PRESENTING SUBSTANTIAL EVIDENCE TO**  
31 **SUPPORT A PRIMA FACIE CASE.**

1                   **(III) IF THE RESPONDING PARTY MEETS THE BURDEN**  
2 **DESCRIBED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE COURT SHALL**  
3 **DENY THE MOTION.**

4                   **(3) IN RULING ON A MOTION TO DISMISS OR A MOTION TO STAY**  
5 **UNDER THIS SUBSECTION, THE COURT SHALL CONSIDER PLEADINGS,**  
6 **SUPPORTING AFFIDAVITS, AND OPPOSING AFFIDAVITS THAT STATE THE FACTS**  
7 **ON WHICH THE LIABILITY OR DEFENSE IS BASED.**

8                   **(4) IF THE COURT FINDS THAT THE RESPONDING PARTY HAS**  
9 **ESTABLISHED A PROBABILITY OF PREVAILING IN THE LAWSUIT:**

10                   **(I) THE FACT THAT THE FINDING HAS BEEN MADE AND THE**  
11 **SUBSTANCE OF THE FINDING IS NOT ADMISSIBLE IN EVIDENCE AT ANY LATER**  
12 **STAGE IN THE LAWSUIT; AND**

13                   **(II) THE FINDING MAY NOT AFFECT THE BURDEN OF PROOF**  
14 **APPLIED IN THE LAWSUIT.**

15                   **(5) THE OFFICE OF THE ATTORNEY GENERAL, OR ANY**  
16 **GOVERNMENT BODY TO WHICH THE MOVING PARTY'S COMMUNICATION WAS**  
17 **DIRECTED, MAY INTERVENE TO DEFEND OR SUPPORT THE MOVING PARTY.**

18                   **(D) (1) THE COURT SHALL STAY DISCOVERY AND ANY PENDING**  
19 **HEARINGS OR MOTIONS IN THE LAWSUIT ON THE FILING OF A MOTION TO**  
20 **DISMISS OR A MOTION TO STAY UNDER SUBSECTION (C) OF THIS SECTION.**

21                   **(2) A STAY UNDER THIS SUBSECTION SHALL REMAIN IN EFFECT**  
22 **UNTIL THE COURT RULES ON A MOTION TO DISMISS OR TO STAY UNDER**  
23 **SUBSECTION (C) OF THIS SECTION.**

24                   **(3) NOTWITHSTANDING A STAY ORDERED UNDER THIS**  
25 **SUBSECTION, THE COURT, ON MOTION AND FOR GOOD CAUSE SHOWN, MAY**  
26 **ORDER DISCOVERY OR OTHER HEARINGS OR MOTIONS TO BE CONDUCTED.**

27                   **(E) (1) THE COURT SHALL AWARD A MOVING PARTY WHO PREVAILS**  
28 **ON A MOTION TO DISMISS UNDER SUBSECTION (D) OF THIS SECTION, WITHOUT**  
29 **REGARD TO ANY LIMITS UNDER STATE LAW:**

30                   **(I) LITIGATION COSTS AND REASONABLE ATTORNEY'S FEES**  
31 **IN CONNECTION WITH THE MOTION TO DISMISS UNDER SUBSECTION (C) OF THIS**  
32 **SECTION; AND**

1                   **(II) ANY ADDITIONAL RELIEF, INCLUDING SANCTIONS ON**  
2 **THE RESPONDING PARTY AND ITS ATTORNEYS, AS THE COURT FINDS**  
3 **NECESSARY TO DETER REPETITION OF THE CONDUCT BY OTHERS SIMILARLY**  
4 **SITUATED.**

5                   **(2) IF THE COURT FINDS A MOTION TO DISMISS UNDER**  
6 **SUBSECTION (C) OF THIS SECTION IS FRIVOLOUS OR SOLELY INTENDED TO**  
7 **CAUSE UNNECESSARY DELAY, THE COURT SHALL AWARD REASONABLE**  
8 **ATTORNEY'S FEES AND LITIGATION COSTS TO THE RESPONDING PARTY.**

9           **[(e)] (F)**       This section:

10                   (1)    Is applicable to SLAPP suits notwithstanding any other law or  
11 rule; and

12                   (2)    Does not diminish any equitable or legal right or remedy otherwise  
13 available to a defendant in a SLAPP suit.

14           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
15 construed to apply only prospectively and may not be applied or interpreted to have  
16 any effect on or application to any cause of action arising before the effective date of  
17 this Act.

18           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
19 October 1, 2012.